

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Daniel DiRocco	Team: Team # 3	CCRB Case #: 201110584	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 07/30/2011 9:30 PM	Location of Incident: West 126th Street and 7th Avenue	Precinct: 28	18 Mo. SOL 1/30/2013	EO SOL 1/30/2013	
Date/Time CV Reported Mon, 08/15/2011 4:49 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 08/15/2011 4:49 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Aaron Thorn	17386	907442	032 PCT
2. POM Marc Trelles	09246	939602	032 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Aaron Thorn	Abuse: Officer Aaron Thorn stopped § 87(2)(b)	
B.POM Marc Trelles	Abuse: Officer Marc Trelles stopped § 87(2)(b)	
C.POM Aaron Thorn	Abuse: Officer Aaron Thorn frisked § 87(2)(b)	
D.POM Marc Trelles	Abuse: Officer Marc Trelles frisked § 87(2)(b)	
E.POM Aaron Thorn	Abuse: Officer Aaron Thorn searched § 87(2)(b)	
F.POM Aaron Thorn	Abuse: Officer Aaron Thorn searched the vehicle in which § 87(2)(b) was an occupant.	
§ 87(4-b) § 87(2)(g)		
§ 87(4-b) § 87(2)(g)		
§ 87(4-b) § 87(2)(g)		
§ 87(4-b) § 87(2)(g)		

Case Summary

§ 87(2)(b) filed this complaint with the CCRB via telephone on August 15, 2011 [enclosed 4A-4B].

At approximately 9:30 p.m. on July 30, 2011, § 87(2)(b) Thorn was speaking with his friend, § 87(2)(b) on West 126th Street and 7th Avenue in Manhattan. During their conversation, the two encountered Officer Aaron Thorn and Officer Marc Trelles, both of the 32nd Precinct. The following allegations resulted.

- **Allegation A—Abuse of Authority: Officer Aaron Thorn stopped** § 87(2)(b)
§ 87(2)(g)
- **Allegation B—Abuse of Authority: Officer Marc Trelles stopped** § 87(2)(b)
- **Allegation D—Abuse of Authority: Officer Marc Trelles frisked** § 87(2)(b)
§ 87(2)(g)
- **Allegation C—Abuse of Authority: Officer Aaron Thorn frisked** § 87(2)(b)
§ 87(2)(g)
- **Allegation E—Abuse of Authority: Officer Officer Aaron Thorn searched** § 87(2)(b)
§ 87(2)(g)
- **Allegation F—Abuse of Authority: Officer Aaron Thorn searched the vehicle in which** § 87(2)(b) **was an occupant.**
§ 87(2)(g)
- § 87(4-b) § 87(2)(g)
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This case was initially assigned to Investigator Max Gross. On August 8, 2012, following Investigator Gross' departure from the CCRB, the case was reassigned to the undersigned investigator.

§ 87(2)(b) declined mediation when Investigator Gross presented it to him following his CCRB testimony on August 31, 2011.

Results of Investigation

Video Footage

An individual named § 87(2)(b) recorded part of this incident using his cell phone [enclosed 19A]. The video is posted on § 87(2)(b) at the following web address:

§ 87(2)(b)

At the 00:16 minute mark on the recording, Officer Aaron Thorn is standing in front of § 87(2)(b)'s car, speaking with § 87(2)(b). Officer Marc Trelles is standing in front of § 87(2)(b). § 87(2)(b) is next to the front driver's side of his car. The driver's side door of § 87(2)(b)'s car is open.

In less than one minute, both Officer Thorn and Officer Trelles escort § 87(2)(b) and § 87(2)(b) to the rear of the car. Between the 1:05 minute mark on the recording and the 3:34 minute mark on the recording, Officer Thorn, with his flashlight in hand, enters the front driver's side, the rear driver's side, and the front passenger's side of § 87(2)(b)'s car. Officer Thorn examines the center console area, behind and underneath the front driver's seat, and the area between the rear windshield and the two back seats. It is unclear if Officer Thorn opens any compartments.

In the midst of the vehicle search, at about the 2:00 minute mark on the recording, the camera turns to the rear of the car. Officer Trelles is standing there, in front of § 87(2)(b) and § 87(2)(b) with his flashlight in hand. The camera then returns to Officer Thorn, who continues to search the car as described above.

At the 3:34 minute mark on the recording, § 87(2)(b) walks to the front passenger's side of the car, removes unidentified documentation from within, and hands it to Officer Thorn. Officer Thorn examines the documentation and returns it to § 87(2)(b). Officer Thorn and Officer Trelles leave soon after.

Civilian Statement

Complainant/Victim: § 87(2)(b)

- § 87(2)(b) is a black male who was § 87(2)(b) old at the time of the incident. § 87(2)(b) is 5'7" tall and 162 pounds. He has black hair and brown eyes.

CCRB Statement

§ 87(2)(b) provided a sworn statement to the CCRB on August 31, 2011 [enclosed 5A-5E] and a follow-up telephone statement on August 26, 2012 [enclosed 6]. § 87(2)(g)

At approximately 9:00 p.m. on July 30, 2011, § 87(2)(b) legally parked his four-door, 1994 Acura on West 126th Street and 7th Avenue in Manhattan. No one else was in the car. § 87(2)(b) was wearing a t-shirt and cargo shorts. He had his cell phone and his keys in his left shorts pocket, and his wallet in his back shorts pocket.

§ 87(2)(b) exited his car and an individual, whom § 87(2)(b) only knew as "§ 87(2)(b)" [identified via investigation as § 87(2)(b)] approached him. § 87(2)(b) had parked his vehicle on the street directly in front of § 87(2)(b)'s car.

§ 87(2)(b) and § 87(2)(b) had a brief conversation regarding the condition of § 87(2)(b)'s car. § 87(2)(b) asked § 87(2)(b) if he could examine the car and § 87(2)(b) obliged. § 87(2)(b) popped the hood of his car and § 87(2)(b) inspected the engine. § 87(2)(b) then returned to and sat in the front driver's seat, leaving the door open. Neither § 87(2)(b) nor § 87(2)(b) had anything in their hands.

In his follow-up telephone statement, § 87(2)(b) claimed that he never popped the hood of his car. Instead, § 87(2)(b) stated that he walked § 87(2)(b) to the front driver's side, opened the door, and allowed § 87(2)(b) to look at the car's interior. Neither of the two physically entered the car. § 87(2)(b) and § 87(2)(b) then closed the door and stood next to the car for two minutes.

Moments later, an unmarked black police vehicle holding two plainclothed officers pulled up near § 87(2)(b)'s car. One of the officers was a black male, identified via investigation as Officer Aaron Thorn, of the 32nd Precinct, and the other officer was a Hispanic male, identified via investigation as Officer Marc Trelles, of the 32nd Precinct.

Officer Thorn and Officer Trelles simultaneously exited the police vehicle. Officer Thorn approached § 87(2)(b) who, according to his initial CCRB statement, was still in the front driver's seat.

Officer Thorn twice ordered § 87(2)(b) to "get out the car." § 87(2)(b) complied with the directive and Officer Thorn placed him against the car. Officer Thorn patted down § 87(2)(b)'s waist, pants pockets, and crotch, and then reached into each of § 87(2)(b)'s front shorts pockets. Officer Thorn asked § 87(2)(b) if he "had anything on [him]," to which § 87(2)(b) replied that he did not. Meanwhile, Officer Trelles patted down § 87(2)(b) near the hood of § 87(2)(b)'s car.

Following the above, Officer Thorn directed § 87(2)(b) to the rear of the car, where § 87(2)(b) stood with Officer Trelles. Officer Thorn then entered § 87(2)(b)'s car. Officer Thorn searched the entire interior of the car, including the glove compartment and the center console.

Once Officer Thorn finished the search, he approached § 87(2)(b) and asked him to produce his license and insurance. § 87(2)(b) with permission from Officer Thorn, entered his car and retrieved the requested documentation. Officer Thorn examined § 87(2)(b)'s license and insurance, and the officers left. No one was summonsed or arrested.

Attempts to Contact Civilians

Between October 3, 2011 and October 14, 2011, Investigator Gross left two voicemail messages for § 87(2)(b) and mailed him an unreturned please call letter. On October 20, 2011, Investigator Gross reached § 87(2)(b) via telephone, at which point § 87(2)(b) confirmed his contact information already on record and scheduled a CCRB statement for October 26, 2011.

However, § 87(2)(b) failed to appear as scheduled. Investigator Gross left § 87(2)(b) a voicemail message on October 26, 2011 and mailed him an unreturned missed appointment letter on the same date. On November 2, 2011, Investigator Gross reached § 87(2)(b) via telephone, at which point § 87(2)(b) rescheduled his appointment for the following day, November 3, 2011.

However, § 87(2)(b) again failed to appear as scheduled, missing his second consecutive appointment. A search of the New York City Department of Correction Inmate Tracking System website performed on October 19, 2012 revealed that § 87(2)(b) is not currently incarcerated nor was he incarcerated while Investigator Gross attempted to reach him. Consequently, the CCRB was unable to obtain a sworn statement from § 87(2)(b).

In addition, according to the § 87(2)(b) video, the individual who filmed the incident is named § 87(2)(b). No further contact information is provided for § 87(2)(b) on the website. Searches of google.com, the Lexis-Nexis database, and the New York State Department of Motor Vehicle website [enclosed 17A-17F] all produced one possible mailing address for § 87(2)(b) but no telephone number. Investigator Gross mailed § 87(2)(b) a please call letter on September 12, 2012, but it was returned by the United States Postal Service on September 20, 2012. As such, the CCRB was unable to contact § 87(2)(b).

NYPD Statements

Subject Officer: OFFICER AARON THORN

- Officer Thorn is a § 87(2)(b)-old black male. He is 6'2" tall and 225 pounds. Officer Thorn has black hair and brown eyes.
- On July 30, 2011, Officer Thorn, of the 32nd Precinct, was assigned to Anti-Crime and was partnered with Officer Marc Trelles, also of the 32nd Precinct, in an unmarked patrol car. Officer Thorn was dressed in plainclothes. He worked from 7:30 p.m. on July 30, 2011 to 4:05 a.m. on July 31, 2011.

Memo Book Entries

Officer Thorn recorded § 87(2)(b)s and § 87(2)(b)s pedigree information on his flysheet. He had no further entries in his memo book [enclosed 7A-7C].

CCRB Statement

Officer Thorn was interviewed at the CCRB on January 26, 2012 [enclosed 9A-9C]. His statement is summarized below.

At approximately 9:30 p.m. on July 30, 2011, Officer Thorn and Officer Trelles, from their patrol car, observed two individuals, § 87(2)(b) and § 87(2)(b) positioned near a parked vehicle on West 126th Street and 7th Avenue in Manhattan. § 87(2)(b) appeared to be leaning into the front driver's side of the vehicle and § 87(2)(b) was standing nearby.

Officer Thorn and Officer Trelles subsequently stopped their patrol car and began to approach § 87(2)(b) and § 87(2)(b). At that point, § 87(2)(b)s body was more fully inside of the front driver's side of the vehicle. He was essentially "lying down."

As Officer Thorn moved closer to § 87(2)(b) he noticed that § 87(2)(b) had "tools" in his hands. Officer Thorn believed one of these tools to be a screwdriver. He did not recall what the other tools were. Officer Thorn did not see what § 87(2)(b) was doing inside of the vehicle, including if he was using any of the tools to compromise its interior.

When Officer Thorn reached § 87(2)(b) he asked him to step out of the vehicle. § 87(2)(b) complied. Officer Thorn, from outside of the vehicle, looked through its windows. He did not notice anything damaged inside. Officer Thorn told § 87(2)(b) to place the tools on the ground, which § 87(2)(b) did.

Officer Thorn subsequently asked § 87(2)(b) "if [he] had anything on [him]" and frisked § 87(2)(b)s entire body, from his shoulders to his ankles, in that order. Officer Thorn did not recall if he entered § 87(2)(b)s pockets.

Officer Thorn frisked § 87(2)(b) to ensure that § 87(2)(b) was not in possession of a weapon. Officer Thorn did not know what § 87(2)(b) was doing inside of the vehicle or what else § 87(2)(b) had on his person, other than the tools that were in his hands. Officer Thorn did not recall having observed anything particular to § 87(2)(b)s person, e.g. a bulge, linking him to possession of a weapon.

During the frisk, Officer Thorn asked § 87(2)(b) what he was doing in the vehicle. § 87(2)(b) replied either that he had just fixed the vehicle or that he was attempting to buy it. Officer Thorn did not recall if § 87(2)(b) provided him with documentation verifying ownership of the vehicle.

Following the frisk, Officer Thorn decided to enter and search the vehicle to determine if § 87(2)(b) had broken into it. § 87(2)(b) did not consent to the vehicle search. Officer Thorn searched the front and back of the vehicle. He did not recall if he opened the glove compartment. Officer Thorn specifically checked the radio to ensure that it had not been tampered with or damaged. Officer Thorn did not detect any abnormalities while inside of the vehicle.

After searching the vehicle, Officer Thorn obtained § 87(2)(b)s and § 87(2)(b)s pedigree information. He and Officer Trelles then left the scene. § 87(2)(b) remained calm and compliant throughout the incident. Officer Thorn did not observe Officer Trelles' interaction with § 87(2)(b). Officer Thorne believed, though he was not sure, that he prepared a stop and frisk report.

Subject Officer: OFFICER MARC TRELLES

- *Officer Trelles is a § 87(2)(b)-old Hispanic male. He is 6'0" tall and 240 pounds. Officer Trelles has brown hair and brown eyes.*
- *On July 30, 2011, Officer Trelles, of the 32nd Precinct, worked the same tour and assignment as Officer Thorn.*

Memo Book Entries

Officer Trelles had no memo book entries regarding the incident [enclosed 10A-10B].

CCRB Statement

Officer Trelles was interviewed at the CCRB on April 25, 2012 [enclosed 12A-12B]. His statement is summarized below.

Officer Trelles did not recall the incident. Officer Trelles viewed the video footage and confirmed that he was present. However, he still did not independently recall the incident.

NYPD Documents

32nd Precinct Stop, Question, and Frisk Log

The 32nd Precinct handwritten stop, question, and frisk log reveals no entries for § 87(2)(b) or § 87(2)(b) [enclosed 13C-13I].

NYPD Monitoring and Analysis Section 28th Precinct Stop, Question, and Frisk Log

Consultation with the NYPD Monitoring and Analysis Section (MAS) computer-generated stop, question, and frisk log for the 28th Precinct [enclosed 13A] reveals no entries for § 87(2)(b) or § 87(2)(b). Furthermore, MAS did not have a record of any stop, question, and frisk report prepared by Officer Thorn or Officer Trelles on the date of the incident.

Status of Civil Proceedings

- As of August 21, 2012, roughly nine months following the 90-day filing deadline, neither § 87(2)(b) nor § 87(2)(b) had filed a Notice of Claim with the City of New York with regard to the incident.

Civilians Criminal Histories

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]

Civilians CCRB Histories

- This is the first CCRB complaint filed by § 87(2)(b) § 87(2)(b)
[REDACTED]
- This is the first CCRB complaint in which § 87(2)(b) has been involved [enclosed 2B].

Subject Officers CCRB Histories

- Officer Aaron Thorn has been a member of the service for 18 years and there is one substantiated CCRB allegation against him [enclosed 1A-1C].
 - In CCRB case number 200909090, the CCRB substantiated an allegation of abuse of authority: frisk. The NYPD issued Instructions in December 2010.
- Officer Marc Trelles has been a member of the service for seven years and there are no substantiated CCRB allegations against him [enclosed 1D].

Conclusion

Identification of Subject Officers

Officer Thorn acknowledged interacting with § 87(2)(b). Officer Trelles was partnered with Officer Thorn at the time of the incident and is seen on the video footage. § 87(2)(g)

Investigative Findings and Recommendations

Allegation A—Abuse of Authority: Officer Aaron Thorn stopped § 87(2)(b)

It is undisputed that Officer Thorn stopped § 87(2)(b).

Officer Thorn initially saw § 87(2)(b) leaning into the front driver's side of a vehicle parked on West 126th Street and 7th Avenue in Manhattan. § 87(2)(b) was standing behind § 87(2)(b). Officer Thorn approached the vehicle and noticed that § 87(2)(b) had “tools,” including a screwdriver, in his hand. Officer Thorn did not see what § 87(2)(b) was doing with the tools or if he was compromising the interior of the vehicle.

Officer Thorn asked § 87(2)(b) to exit the vehicle and § 87(2)(b) complied. Officer Thorn looked through the windows of the vehicle and did not notice anything damaged inside. Because Officer Thorn did not know what § 87(2)(b) was doing in the vehicle, he asked him if he had anything illegal on his person and then frisked him.

If an individual is detained by virtue of a significant interruption of his/her liberty of movement, then that individual has been stopped for purposes of the fourth amendment. See People v. Cantor, 36 N.Y.2d 106 (1975) [enclosed EA-EF]. In order to stop an individual, an officer must harbor reasonable suspicion that the individual engaged in, was engaging in, or was about to engage in a crime classified as a felony or a misdemeanor under New York State Penal Law. Founded suspicion alone will justify a common law right to inquire, not a stop. See People v. DeBour, 40 N.Y.2d 210 (1976) [enclosed BA-BK].

An officer's observation of an individual seated in a parked car with a “popped” ignition, wires dangling from the dashboard, and a screwdriver between the two front seats will only generate founded suspicion that criminality is afoot. See People v. Locano, 209 A.D.2d 278 (1994 – 1st Dept.) [enclosed FA-FB].

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation B—Abuse of Authority: Officer Marc Trelles stopped § 87(2)(b)

Allegation D—Abuse of Authority: Officer Marc Trelles frisked § 87(2)(b)

As discussed earlier, § 87(2)(b) failed to cooperate with the CCRB to provide a sworn statement, missing two consecutive appointments. § 87(2)(g)

Allegation C—Abuse of Authority: Officer Aaron Thorn frisked § 87(2)(b)

It is undisputed that Officer Thorn frisked § 87(2)(b)

Once § 87(2)(b) exited the vehicle, Officer Thorn directed him to place the tools, including the screwdriver, on the ground. § 87(2)(b) complied. Officer Thorn asked § 87(2)(b) if he had anything illegal on his person and then frisked § 87(2)(b)'s entire body, from his shoulders to his ankles. § 87(2)(b) obeyed all commands and remained calm throughout the encounter.

Officer Thorn testified that he frisked § 87(2)(b) to ensure that he did not possess a weapon. Officer Thorn stated that he did not know what § 87(2)(b) was doing in the vehicle and was unsure if he had anything else aside from the tools. Officer Thorn did not recall having observed anything specific to § 87(2)(b)'s person, e.g. a bulge, which may have prompted the frisk.

In order to frisk an individual, an officer must reasonably suspect that he/she is in danger by virtue of the individual being armed. See DeBour. Possession of an ordinary tool, such as a screwdriver, which could conceivably be improvised as a weapon, does not by itself justify a frisk. See People v. Shuler, 2012 NY Slip Op 6040 (2012 – 2nd Dept.) [enclosed AA-AB].

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation E—Abuse of Authority: Officer Officer Aaron Thorn searched § 87(2)(b)

§ 87(2)(b) alleged that, following the frisk, Officer Thorn placed his hands into his shorts pockets.

Officer Thorn did not recall if he entered any of § 87(2)(b)'s pockets.

The video footage did not capture this part of the encounter. § 87(2)(b) refused to cooperate with the CCRB to provide a sworn statement and Officer Trelles did not recall the incident.

§ 87(2)(g)

Allegation F—Abuse of Authority: Officer Aaron Thorn searched the vehicle in which § 87(2)(b) was an occupant.

It is undisputed that Officer Thorn searched the interior of § 87(2)(b)'s vehicle, including near and around both the front and the back seats.

After § 87(2)(b) exited the vehicle, Officer Thorn frisked him. During the frisk, Officer Thorn asked § 87(2)(b) what he was doing in the vehicle. § 87(2)(b) replied either that he had just fixed the vehicle or that he was attempting to buy it. It was then that Officer Thorn entered the vehicle and searched it. Officer Thorn confirmed that § 87(2)(b) did not consent to the search.

A warrantless search of a vehicle beyond the immediate grabbable area is only permitted when an officer has probable cause to believe that the vehicle contains contraband, a weapon, or evidence of a crime. See People v. Vargas, 89 A.D.3d 771 (2011 – 2nd Dept.) [enclosed CA-CB].

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(4-b) § 87(2)(g)

§ 87(4-b) § 87(2)(g)

§ 87(4-b) § 87(2)(g)

Team: _____

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
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